IN THE

SUPREME COURT OF THE

UNITED STATES OF AMERICA

No._____

HERMAN WILLIAMS AND BENJAMIN SCOTT, JR.,,
Petitioners

versus

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JULIAN HARTRIDGE, JR., ESQ.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN, ESQ.
902 Liberty Bank Bldg.
Savannah, Georgia

Attorneys for Petitioners

INDEX

	Page
Reference to Opinions	1
Jurisdiction	1, 2
Question Presented for Review	2, 3
Constitutional Provision Involved	3
Statement of Case	3, 4, 5
Statement of Law and Argument	5, 6, 7, 8
Certificate of Service	9

TABLE OF CASES

Holdridge et al vs. U. S.	2, 6, 7
Johnson vs. U. S.	2, 8
Romualdo vs. U. S.	2, 8
Weaver vs. U. S.	6
Jones vs. U. S.	2, 7

APPENDIX

Appendix "A", Opinion of Fifth Circuit Court of Appeals	10
Appendix "B", Judgment and Entry of Judgment of Fifth Circuit Court of Appeals	11
Appendix "C", Order of Fifth Circuit Court of Appeals Denying Rehearing	12

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

_____ TERM 1966

HERMAN WILLIAMS AND
BENJAMIN SCOTT, JR.,
Petitioners
versus
UNITED STATES OF AMERICA,
Respondent

No._____

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

REFERENCE TO OPINIONS

There were no opinions given by the trial judge in the court of original jurisdiction, said court being The United States District Court for the Southern District of Georgia. The opinion of The United States Court of Appeals for the Fifth Circuit in affirming the judgment of The United States District Court for the Southern District of Georgia is appended to this petition and is marked Appendix "A".

JURISDICTION

The grounds upon which the jurisdiction of the Supreme Court of The United States of America is invoked are set out as follows:

(a) The judgment of The United States Court of Appeals for The Fifth Circuit rendered on the 14th day of April, 1966 and entered on the same date affirming the judgment of the lower court is in conflict with decisions in this Honorable Court as set out in the cases of Johnson vs. U. S.; 323 U. S. Reports, page 273, and Romualdo vs. U. S.; 356 U. S. Reports, page 405. Said judgment of the Fifth Circuit Court of Appeals is appended as Appendix "B" to this petition.

(b) That furthermore said judgment is in conflict with other decisions of other U. S. Circuit Courts of Appeal. Those decisions being the case of Jones vs. U. S., 174 Federal Second, page 746, a decision of the Seventh U. S. Circuit Court of Appeals, and the case of Holdridge et al vs. U. S., 282 Federal Second, page 302, a decision of the Eighth U. S. Circuit Court of Appeals.

(c) That the judgment complained of contravenes the VI amendment to the Constitution of the United States of America and also contravenes Article Three, Section Two of said Constitution. It also contravenes Rule 18 of Federal Rules of Criminal Procedure.

That petitioners' petition for a rehearing in this cause was denied by the Fifth Circuit Court of Appeals on May 11, 1966. Said order being appended hereto as Appendix "C".

QUESTION PRESENTED FOR REVIEW

The sole question presented for review in this case is as follows:

Where the three witnesses for the government testified that they were working out of the Savannah office of the A.T.U. on the day the alleged crime was committed and that they seized the petitioners working and operating a still on Skidaway Island does this prove venue under an indictment which alleges in each of its four counts that the various offenses were com-

mitted "in the county of Chatham, within the Southern District of Georgia." There were no statements made by any government witness which placed Skidaway Island within Chatham County. Further there were no maps of Chatham County introduced in evidence which would show Skidaway Island as being within Chatham County. Further there were no maps or other evidence produced which would place Skidaway Island within the limits of the City of Savannah. Further the District Attorney in his opening statement never mentioned where Skidaway Island was located and in fact never mentioned where the alleged offenses were committed. Where this type evidence is adduced can it be said that an inference can be drawn from the evidence as a whole that the venue has been proved? Does this satisfy the requirements of amendment VI to the Constitution of the United States of America for proving venue?

CONSTITUTIONAL PROVISION INVOLVED

Amendment VI to the Constitution of The United States of America. (See U.S.C.A. Amend. 6-14.)

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATEMENT OF CASE

The petitioners were indicted by a grand jury in the Savannah Division of the Southern District of Georgia, said indictment charging them in four separate counts of 1. Having under

their control an unregistered still, 2. carrying on the business of a distiller without giving bond, 3. having under their control a still which did not have a sign on the outside stating they were operating a "Registered Distillery", and 4. working at a still where no sign was placed stating that they were at a registered still. All offenses being in violation of the Internal Revenue laws of the United States of America. Further each count of the indictment read that the offenses were committed in Chatham County, within the Southern District of Georgia. The petitioners entered their pleas of "not guilty" to the counts in this indictment on May 12th, 1965, at the same time waiving arraignment and trial by jury. They were tried by the district Judge for the Southern District of Georgia on May 12, 1965 and after hearing all the evidence in the case he found both petitioners guilty and he sentenced the petitioners each to one year and one day in the custody of the Attorney General. A timely motion for a new trial was filed by petitioners and upon a hearing of the same said motion was denied. A timely notice of appeal was filed and said cause was appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals affirmed the judgment of the lower court on April 14, 1966. A timely petition for a rehearing was filed and said order denying the rehearing was entered in the Fifth Circuit Court of Appeals on May 11, 1966.

In the trial of the case in the district court the government presented three witnesses, all A.T.U. agents who having been sworn testified essentially as follows: "That on the 28th of February, 1963, they were working out of the Savannah office of the Alcohol and Tobacco Tax Unit, U. S. Treasury Department, Internal Revenue Service. That they went to Skidaway Island. That two of the agents took up a position on the back side of the island while the other went around to the still loca-

tion to flush out the men working there. That said agent did go up to the still site and saw four colored men working at the still. That upon seeing said agent they scattered and ran. That said still was in operation. That it was unregistered. That all the colored men were dipping mash when the single agent came upon them. That he captured one of the men, said man being Herman Williams, the petitioner in this case. That the other agents brought back your other petitioner, Ben Scott, who had fled into the hands of the other two agents." This was all the evidence the government offered. The defendants put up no evidence. Counsel for the defendants Williams and Scott raised the point regarding venue at the conclusion of the government's evidence after the government had closed. The trial judge said that "He would take judicial notice that Skidaway Island was in the Southern District of Georgia." After this your petitioners, Williams and Scott, were found guilty and sentenced.

STATEMENT OF LAW AND ARGUMENT

Petitioners set forth the following ground for allowing their Petition for a Writ of Certiorari:

In regard to venue, no government witness either directly or indirectly mentioned the State of Georgia, Chatham County, nor the Southern District of Georgia. There was nothing put in evidence which would identify Skidaway Island as being in Chatham County or in Savannah, or in the Southern District of Georgia. No maps were introduced which would identify this island as being within Chatham County or within the City of Savannah. The indictment itself did not place or name Skidaway Island. The District Attorney did not mention Skidaway Island or any other place as being the situs of the alleged offenses in his opening statement. There was nothing which

could be inferred from the evidence as a whole which would show Skidaway Island was either in Savannah, Georgia, or in Chatham County, which would place it in the Southern District of Georgia, thereby proving venue. The evidence in this present case is entirely different from the evidence relied upon by the Fifth Circuit Court of Appeals in finding the way it did in the case of Weaver v. U. S. 298 F 2nd 496. In that case the indictment alleged the crime to have been committed in Mobile, Alabama, within that district in Alabama. Certain streets were named by the agents testifying. The Fifth Circuit held that although the district court could not take judicial notice of street locations, that since maps were used of the City of Mobile and these streets were pointed out on these maps, and that in addition since the indictment stated that the crime happened in Mobile, and the District Attorney said he would prove it happened in Mobile, that all of this taken as a whole would infer that these streets were in Mobile and that a jury could so infer and that venue was proved. Yet the Fifth Circuit Court of Appeals has placed the facts of the present case under the Weaver case in finding against your petitioners in the present case. In the Weaver case the Fifth Circuit also spelled out what a Judge could take judicial notice of and held that on the question of venue courts could take judicial notice of "boundaries of the nation, location of states and territories, location of the boundaries of the state in which the court is sitting, of counties, districts and townships; location of any incorporated city as well as locations of governmental buildings and institutions." Clearly they excluded the location of islands.

We also submit that the holding in the present case is in conflict with the case of Holdridge et al vs. U. S., 282 Fed. 2nd 302, an Eighth Circuit Court of Appeals decision. This Holdridge case held that venue was a matter of constitutional right and questions of venue are not merely matters of formal

legal procedure, but raise deep questions of public policy. It also held that the government must prove venue as any other fact. It also held that venue could be proved by taking the evidence as a whole and drawing an inference therefrom provided proper identification is established which would place the street or streets within a geographical location of which the court could take judicial notice. There again the Eighth Circuit emphasized that there must be a proper identification connecting the situs of the crime to a city or town or county thereby giving the court the right to say it takes judicial notice that this was in the district where the court was sitting thereby establishing venue. Applying the ruling in the Holdridge case to the present case we see that in the present case there are not sufficient facts shown wherein the court could take judicial notice by inferring from the record as a whole that Skidaway Island was within Chatham County, within the Southern District of Georgia or within Savannah city limits within the Southern District of Georgia.

We also submit that the holding in the present case is in conflict with a decision of the Seventh Circuit Court of Appeals. That decision is set out in Jones vs. U. S., 174 Fed. 2nd 746. That case held that even though the term "City of Chicago" was used five times in the testimony and that at other times certain streets were named that the trial court was in error in taking judicial notice that the streets were in the City of Chicago for the purpose of proving venue. The Eighth Circuit Court of Appeals held that no testimony was ever offered which identified these streets as being in the City of Chicago. That there was no connecting these streets with the City of Chicago. The facts of the Jones case are far stronger than the facts of the present case, yet even so the Jones case held that venue was not proved.

We also submit that the decision of the Fifth Circuit Court of Appeals in the present case is in conflict with two decisions of this Honorable Court. Those decisions being set out in the case of Johnson vs. U. S., 323 U. S. Reports, page 273, and in the case of Romualdo vs. U. S., 356 U. S. Reports, page 405. Both of these decisions held that while venue need not be proved beyond a reasonable doubt that still it is a fact which must be proved like all other facts in a criminal action. They also held that venue can be inferred if the evidence taken as a whole would allow an inference to be drawn. In our present case no inference can be drawn from the record of the case taken in its entirety. There are no decisions which we know of which allow a court to take judicial notice that an Island is located within a judicial district where no evidence at all is offered to identify and connect said island with any county, city, township, district or territory. We respectfully submit that this Honorable Court consider our petition in view of what has been heretofore set out herein.

Petitioner prays that the writ of certiorari issue under the Seal of this Court, and that the judgment of said United States Court of Appeals for the Fifth Circuit be reversed by the Court; and for such further relief as to this Court may seem proper.

Respectfully submitted,

_____

_____

Attorneys for Petitioners

JULIAN HARTRIDGE, JR., ESQ.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN, ESQ.
902 Liberty Bank Building
Savannah, Georgia

CERTIFICATE OF SERVICE

We hereby certify that we are attorneys of record for the petitioners in the within and foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit; and

We further certify that we have this day caused a copy of said petition to be served on Counsel for the Respondents, by depositing a true and correct copy of the same, with adequate postage affixed, and properly addressed to the following:

Solicitor General of the United States
Department of Justice
Washington, 25, D. C.

The Honorable Donald Fraser
United States District Attorney
United States Post Office Building
Savannah, Georgia

_____

_____

Attorneys for Petitioners

JULIAN HARTRIDGE, JR.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN
902 Liberty Bank Building
Savannah, Georgia

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 22896

HERMAN WILLIAMS & BENJAMIN SCOTT, JR.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

(April 14, 1966.)

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and LYNNE, District Judge.

PER CURIAM: The evidence adduced in the trial of this case was ample to submit to the jury the question whether appellant violated the stated provisions of Internal Revenue laws relating to liquor. We conclude that the trial court could properly take judicial notice of the fact that Skidaway Island was in the Southern District of Georgia. *Weaver v. United States,* (5 Cir.) 298 F. 2nd 496, 499. It was not necessary that the Government adduce proof to this effect.

The Judgment is AFFIRMED.

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1965

No. 22896

D. C. Docket No. Cr. 16392 — Criminal

HERMAN WILLIAMS & BENJAMIN SCOTT, JR.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and LYNNE, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel for appellee, and was taken under submission by the Court upon the record and briefs on file for appellants;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

April 14, 1966

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 22896

HERMAN WILLIAMS & BENJAMIN SCOTT, JR.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

(May 11, 1966.)

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and LYNNE, District Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.

APPENDIX "C"

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 202

HERMAN WILLIAMS AND BENJAMIN SCOTT, JR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 32; Pet. App. A) is reported at 359 F. 2d 67.

JURISDICTION

The judgment of the court of appeals was entered on April 14, 1966 (R. 34; Pet. App. B). A petition for rehearing was denied on May 11, 1966 (R. 40; Pet. App. C). The petition for a writ of certiorari

was filed on June 6, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was adequate proof of venue.

STATEMENT

After waiving a trial by jury, petitioners were convicted by the United States District Court for the Southern District of Georgia of operating an illegal distillery in violation of the Internal Revenue Code [1] (R. 1-2, 21-24). Each petitioner was sentenced to a general term of 1 year and 1 day (R. 22-24), and the court of appeals affirmed *per curiam*.

At the trial, three United States Treasury agents testified that they raided a still operating in the woods on Skidaway Island on February 28, 1963 (R. 6-15). One of the agents testified that he saw four men pouring mash into the still, that the men ran away when he approached, and that he stopped petitioner Williams, who broke away and was subsequently caught by another agent (R. 8-9, 13). Another agent testified that he caught petitioner Scott as he attempted to escape from the site (R. 14-15).

---

[1] Counts 1 and 3 charged, respectively, unlawful possession and custody of a still without having the same registered and without having the required sign posted. See 26 U.S.C. 5601(a) and 5179; 26 U.S.C. 5681 and 5180. Count 2 charged carrying on of the business of a distiller without having given bond (26 U.S.C. 5601(a)(4)), and count 4 charged working at a distillery upon which the required sign was not posted (26 U.S.C. 5681(c) and 5180).

ARGUMENT

There is no merit in petitioners' contention that there was a failure of proof as to venue. The decisions, including cases erroneously alleged by petitioners to be in conflict with the decision below,[2] are in agreement that venue need not be proved by direct and positive proof but may be inferred from the evidence as a whole. See *Weaver* v. *United States*, 298 F. 2d 496 (C.A. 5); *Holdridge* v. *United States*, 282 F. 2d 302 (C.A. 8); *United States* v. *Jones*, 174 F. 2d 746 (C.A. 7).

In this case, three federal agents testified that on February 28, 1963, they were working out of the Savannah office of the Alcohol and Tobacco Tax Unit and that, on this date, they participated in the seizure of a still on Skidaway Island (R. 6-7, 12-13, 14). As the court below held, the trial court, as trier of the facts, properly took judicial notice of the fact that Skidaway Island is in the Southern District of Georgia. See *Weaver* v. *United States*, *supra*; *United States* v. *Harris*, 331 F. 2d 600 (C.A. 6).

---

[2] Contrary to petitioners' contention, this Court's decision in *Johnson* v. *United States*, 323 U.S. 273, does not concern the sufficiency of proof of venue. In *United States* v. *Jones*, 174 F. 2d 746 (C.A. 7), relied upon by petitioner, the court pointed out that it could take judicial notice that Chicago was in the district, but that there was no proof that the streets named in the testimony were in Chicago.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General,

BEATRICE ROSENBERG,
JULIA P. COOPER,
Attorneys.

JUNE 1966.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 221937 899